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Lawsuit on tipping goes to higher court

Hotels accused of keeping gratuities challenge rights of workers under state law

By Andrew Gomes
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The first of several lawsuits to test a fairly new Hawai'i law attempting to prevent hotels and restaurants from keeping gratuities intended for workers was heard by a federal judge this week, but a challenge by defendant Four Seasons Hotel Ltd. could mean the case and others like it won't be resolved for several years.

The case, filed on behalf of six banquet workers at Four Seasons hotels on Maui and the Big Island, is one of at least nine similar lawsuits against major hotel companies in Hawai'i attempting to recover gratuities for hundreds of employees under a nine-year-old state law.

But defense lawyers for Four Seasons argued that employees can't sue under the law because legislators placed the act within an area of consumer protection statutes as opposed to labor and wage statutes.

U.S. District Judge Helen Gillmor decided that it is more appropriate for the Hawai'i Supreme Court to rule on the issue of interpretation of state law.

The law was enacted in 2000 from legislation titled A Bill for an Act Relating to Wages and Tips of Employees. As initially drafted, the purpose of House Bill 2123 was to strengthen Hawai'i's wage and hour law to protect employees from having gratuities withheld by or credited to their employers.

But the House Committee on Labor and Public Employment concluded that language in the bill would confuse employees and employers by redefining gratuity rules so they no longer match federal law, so the focus of the bill was shifted to more of a consumer protection measure.

The law as enacted requires that hotels and restaurants distribute service charges for food or beverage service to employees, or clearly disclose to customers if the service charges don't entirely go to employees.

The law was included as a miscellaneous provision in a section of statutes on unfair and deceptive trade practices.

Four Seasons argued that employees can't sue under an unfair competition statute, and said doing so would be an improper and unprecedented expansion of this part of state law not directed by the Legislature.

A Boston law firm representing plaintiffs, Pyle Rome Lichten Ehrenberg & Liss-Riordan, said the Four Seasons argument is incredible because the statute was enacted with a clear aim of protecting employees.

Wayne Yoshigai, a local attorney representing Four Seasons, said the law as written is vague about who — customers or employees — should receive proceeds from any violation of the law.

Yoshigai added that even if employees are granted standing to sue under the law, Four Seasons plans to defend against the suit on other merits.

Four Seasons had asked Gillmor to dismiss the case on grounds that employees can't sue under the law, but the judge instead referred the case to the state's highest court.

The state Supreme Court is tasked with ruling on the narrow issue, and any decision on the other merits of the case would be left to the federal court if employees are allowed to sue under the law.

Shannon Liss-Riordan, an attorney representing the plaintiffs, said it could be five years before a determination by the high court is made, but that such a decision will likely affect all similar cases.

"We think this is a good thing," she said, adding that she hopes awareness of the case causes hotels and restaurants to change their practices if they keep any gratuities without informing customers.

Liss-Riordan's firm has filed seven similar suits, against the Fairmont Kea Lani Hotel & Resort, Grand Wailea Resort Hotel & Spa, The Ritz-Carlton Kapalua, Wailea Marriott Resort, Westin Maui, Maui Prince Hotel and the now-closed Renaissance Wailea Beach Resort.

All the suits seek class-action status to represent all employees affected by service charge practices at the hotels.

Local law firms Perkin & Faria and Bickerton Lee Dang & Sullivan have filed a similar suit against Turtle Bay Resort. The Perkin and Bickerton firms also have filed several other cases on behalf of customers seeking compensation for gratuities they said they thought they had paid to service staff.

John Perkin said he believes the law protects both employees and customers. "It's not just a consumer protection law," he said.
